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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,892	07/15/2003	Jessica Elizabeth LeMay	460.2221USQ	7326

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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09/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/619,892

Applicant(s)

LEMAY ET AL.

Examiner

C. Lynne Anderson

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-43.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments have been considered but are not persuasive.

In response to the applicant's argument that the Office Action has failed to interpret the claimed "main section" and "insertion tip" as defined in the present specification, it is noted that while the present invention is generally described on page 6 of the present specification, a description of the drawings does not constitute a clear definition of the terms "main section" and "insertion tip."

In response to the applicant's argument that Linares fails to disclose a tapered main section, it is noted that absent a clear definition of the term "main section" in the present specification, the main section of Linares may be defined for purposes of examination to include a portion of the tapered end, and therefore fulfills the limitations of the claims.

In response to the applicant's argument that the definitions of the terms "main section" and "insertion tip" are well-known and well-defined in the art, it is noted that the applicant has not provided evidence that these terms are well-defined in the art with the narrow definitions being argued by the applicant.

In response to the applicant's argument that Linares fails to disclose the main section having a maximum outer dimension closer to the finger grip than to the insertion tip, it is noted that the main section of Linares is at its widest adjacent the finger grip, and begins to taper adjacent the insertion tip. Therefore, Linares discloses the main body section having a maximum outer dimension closer to the finger grip.

In response to the applicant's argument that Linares fails to disclose the maximum dimension of the main section being located about 55% to 85% of an overall length from the insertion tip, it is noted that at any point along the main section that is located 55% to 85% of the barrel's length from the insertion tip the main section is at its maximum dimension. The main section is at its maximum dimension from the finger grip to the point at which the main section begins to taper, and therefore the section of the main portion located 55% to 85% of the barrel's length as measured from the insertion tip (i.e. from about the mid-point to about the finger grip) has the maximum dimension of the main portion. The present claim does not disclose that any point along the main portion outside of this range cannot also have the maximum dimension of the main section.

In response to the applicant's argument that the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale, it is noted that MPEP 2125 goes on to state that the article pictured can be relied on for what they would reasonably teach one of ordinary skill in the art. The present claims disclose a range of relative dimensions, not actual proportions (i.e. exact sizes), of the article. The drawings of Linares reasonably teach the relative dimensions of the applicator shown.

In response to the applicant's argument that Linares fails to disclose petals having a length-to-width ratio, it is noted that Linares shows in figure 1 the petals being longer than they are wide (i.e. having a length-to-width ratio of greater than 1).